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FILED



LODGED

**Aug 16 2023**

CLERK U.S. DISTRICT COURT  
DISTRICT OF ARIZONA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Destiney Rae Montoya,

Defendant.

23-CR-00277-TUC-RCC (JR)

PLEA AGREEMENT

(Fast Track U.S.S.G. § 5K3.1)

The United States of America and the defendant agree to the following disposition of this matter:

PLEA

The defendant agrees to plead guilty to the Count One of the Indictment charging the defendant with a violation of 8 U.S.C. §§ 1324(a)(1)(A)(v)(I), 1324(a)(1)(A)(ii) and 1324(a)(1)(B)(i), Conspiracy to Transport Illegal Aliens for Profit, a felony. Any remaining counts will be dismissed at the time of sentencing.

ELEMENTS OF THE OFFENSE AND SENTENCE FACTOR

1. The defendant know or was in reckless disregard of the fact that certain aliens had come to, entered, or remained in the United States in violation of law.

2. The defendant knowingly conspired with others to transport illegal aliens within the United States by means of transportation or otherwise in order to help such aliens remain in the United States illegally.

3. The defendant committed the offense for the purpose of commercial advantage or private financial gain.

### STIPULATIONS, TERMS AND AGREEMENTS

#### Maximum Penalties

A violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii) and 1324(a)(1)(B)(i) is punishable by a maximum fine of \$250,000.00, or a maximum term of imprisonment of ten (10) years, or both, plus a term of supervised release of three years and a special assessment of \$100; the special assessment is due and payable at the time the defendant enters the plea of guilty, and must be paid by the time of sentencing unless the defendant is indigent. If the defendant is indigent, the special assessment will be collected according to Title 18, United States Code, Chapters 227 and 229.

The defendant will pay upon conviction an additional \$5,000 special assessment pursuant to 18 U.S.C. § 3014(a), unless the Court determines that the defendant is indigent.

#### Agreements Regarding Sentence

1. Guideline Calculations: Although the parties understand that the Guidelines are only advisory and just one of the factors the Court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, pursuant to Fed. R. Crim. P. 11(c)(1)(C), the parties stipulate and agree that the below guideline calculations are appropriate for the charge for which the defendant is pleading guilty:

Base Offense Level:	2L1.1(a)(3)	12
Number of Aliens involved (25-99)	2L1.1(b)(2)(B)	+6
Role: manager/supervisor	3B1.1(b)	+3
Acceptance of Responsibility:	3E1.1(a)&(b)	-3
Early Disposition/Government Savings:	5K3.1/5K2.0	-2
Total Adjusted Offense Level:		16

2. Sentencing Range: Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the government and the defendant stipulate and agree that the following are the applicable guideline ranges for the offense, based on the defendant's criminal history category (CHC):

CHC I:	a sentencing range of 21-27 months imprisonment.
CHC II:	a sentencing range of 24-30 months imprisonment.
CHC III:	a sentencing range of 27-33 months imprisonment.

3. The defendant may withdraw from the plea agreement if he/she receives a sentence that exceeds the stipulated ranges listed above.

5. If the Court, after reviewing this plea agreement, concludes any provision is inappropriate under Fed. R. Crim. P. 11(c)(5), it may reject the plea agreement, giving the defendant, in accordance with Fed. R. Crim. P. 11(d)(2)(A), an opportunity to withdraw the defendant's guilty plea.

### Forfeiture

- 3 -



1 an action for civil forfeiture. Further, this agreement does not preclude the United States  
2 from instituting any civil proceedings as may be appropriate now or in the future.

3 Plea Addendum

4 This written plea agreement, and any written addenda filed as attachments to this  
5 plea agreement, contained all the terms and conditions of the plea. Any additional  
6 agreements, if any such agreements exist, shall be recorded in a separate document and  
7 may be filed with the Court under seal. Accordingly, additional agreements, if any, may  
8 not be in the public record.

9 Waiver of Defenses and Appeal Rights

10 Provided the defendant receives a sentence not to exceed 57 months' imprisonment,  
11 the defendant waives any and all motions, defenses, probable cause determinations, and  
12 objections that the defendant could assert to the information or indictment, or to the petition  
13 to revoke, or to the Court's entry of judgment against the defendant and imposition of  
14 sentence upon the defendant providing the sentence is consistent with this agreement. The  
15 sentence is in accordance with this agreement if the sentence imposed is within the  
16 stipulated range or below the stipulated range if the Court grants a variance. The defendant  
17 further waives: (1) any right to appeal the Court's entry of judgment against defendant; (2)  
18 any right to appeal the imposition of sentence upon defendant under 18 U.S.C. § 3742  
19 (sentence appeals); (3) any right to appeal the district court's refusal to grant a requested  
20 variance; (4) any right to collaterally attack defendant's conviction and sentence under 28  
21 U.S.C. § 2255, or any other collateral attack; and (5) any right to file a motion for  
22 modification of sentence, including under 18 U.S.C. § 3582(c) (except for the right to file  
23 a compassionate release motion under 18 U.S.C. § 3582(c)(1)(A) and to appeal the denial  
24 of such a motion). The defendant acknowledges that this waiver shall result in the dismissal  
25 of any appeal or collateral attack the defendant might file challenging his/her conviction or  
26 sentence in this case. If the defendant files a notice of appeal or a habeas petition,  
27 notwithstanding this agreement, defendant agrees that this case shall, upon motion of the  
28 government, be remanded to the district court to determine whether defendant is in breach

1 of this agreement and, if so, to permit the government to withdraw from the plea agreement.  
2 This waiver shall not be construed to bar an otherwise-preserved claim of ineffective  
3 assistance of counsel or of "prosecutorial misconduct" (as that term is defined by Section  
4 II.B of Ariz. Ethics Op. 15-01 (2015)).

5 Reinstitution of Prosecution

6 Nothing in this agreement shall be construed to protect the defendant in any way  
7 from prosecution for perjury, false declaration or false statement, or any other offense  
8 committed by the defendant after the date of this agreement. In addition, if the defendant  
9 commits any criminal offense between the date of this agreement and the date of  
10 sentencing, the government will have the right to withdraw from this agreement. Any  
11 information, statements, documents and evidence which the defendant provides to the  
12 United States pursuant to this agreement may be used against the defendant in all such  
13 proceedings.

14 If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any  
15 court in a later proceeding, the government will be free to prosecute the defendant for all  
16 charges as to which it has knowledge, and any charges that have been dismissed because  
17 of this plea agreement will be automatically reinstated. In such event, the defendant waives  
18 any objections, motions, or defenses based upon the Speedy Trial Act or the Sixth  
19 Amendment to the Constitution as to the delay occasioned by the later proceedings.  
20 Defendant agrees that the stipulated sentencing ranges set forth under "Agreements  
21 Regarding Sentence" will not be offered if prosecution is re-instituted.

22 Disclosure of Information to U.S. Probation Office

23 The defendant understands the government's obligation to provide all information  
24 in its file regarding defendant to the United States Probation Office. The defendant fully  
25 understands and agrees to cooperate fully with the United States Probation Office in  
26 providing all information requested by the probation officer.

27 ///

28 ///

Effect on Other Proceedings

I further understand that if I violate any of the conditions of my supervised release, my supervised release may be revoked. Upon such revocation, notwithstanding any other provision of this agreement, I may be required to serve a term of imprisonment or my sentence may otherwise be altered.

WAIVER OF DEFENDANT'S RIGHTS

I have read each of the provisions of the entire plea agreement with the assistance of counsel and understand its provisions. I have discussed the case and my constitutional and other rights with my attorney. I understand that by entering my plea of guilty I will be giving up my right to plead not guilty; to trial by jury; to confront, cross-examine, and compel the attendance of witnesses; to present evidence in my defense; to remain silent and refuse to be a witnesses against myself by asserting my privilege against self-incrimination; all with the assistance of counsel, to be presumed innocent until proven guilty beyond a reasonable doubt, and to appeal. This waiver shall not be construed to bar an otherwise-preserved claim of ineffective assistance of counsel or of "prosecutorial misconduct."

I agree to enter my guilty plea as indicated above on the terms and conditions set forth in this agreement.

I have been advised by my attorney of the nature of the charge to which I am entering my guilty plea. I have further been advised by my attorney of the nature and range of the possible sentence.

My guilty plea is not the result of force, threats, assurance or promises other than the promises contained in this agreement. I agree to the provisions of this agreement as a voluntary act on my part, rather than at the direction of or because of the recommendation of any other person, and I agree to be bound according to its provisions.

I agree that this written plea agreement contains all the terms and conditions of my plea and that promises made by anyone (including my attorney) that are not contained within this written plea agreement are without force and effect and are null and void.



1 I am satisfied that my defense attorney has represented me in a competent manner.

2 I am not now on or under the influence of any drug, medication, liquor, or other  
3 intoxicant or depressant, which would impair my ability to fully understand the terms and  
4 conditions of this plea agreement.

5 FACTUAL BASIS AND SENTENCING FACTOR

6 I agree that the following facts accurately describe my conduct in connection with  
7 the offense to which I am pleading guilty and that if this matter were to proceed to trial the  
8 government could prove these facts beyond a reasonable doubt:

9 Between 2021 through May, 2022, Defendant MONTOYA, utilized social  
10 media and smartphone applications to solicit and advertise for drivers to  
11 shuttle multiple loads of undocumented noncitizens (UNCs) further into the  
12 United States. MONTOYA would provide her recruited drivers with  
13 directions, load pickup and drop off locations, and arrange for their payment.  
14 Numerous such loads, involving a total of between 25-99 illegal aliens, were  
15 identified and tracked by federal agents. MONTOYA knew that these  
16 individuals she was assisting were illegal aliens and she intended to assist  
17 them with remaining in the United States unlawfully. MONTOYA  
18 acknowledges that she was a manager or supervisor and that the alien  
19 smuggling operation she coordinated with accomplice and codefendant,  
20 Keidy Rivera-Villa, among others, involved five or more participants or was  
21 otherwise extensive. MONTOYA was also going to be paid for her help in  
22 recruiting and organizing the transportation of these UNCs.

23 I have read this agreement or it has been read to me in Spanish, and I have carefully  
24 reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it.

25 Date: 19 July 23

26   
27 Destiny Rae Montoya  
28 Defendant

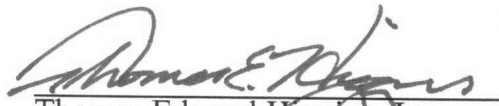
29 DEFENSE ATTORNEY'S APPROVAL

30 I have discussed this case and the plea agreement with my client in detail and have  
31 advised the defendant of all matters within the scope of Rule 11, Fed. R. Crim. P., the  
32 constitutional and other rights of an accused, the factual basis for and the nature of the  
33 offense to which the guilty plea will be entered, possible defenses, and the consequences  
34 of the guilty plea, including the defendant's waiver of the right to appeal. No assurances,

1 promises, or representations have been given to me or to the defendant by the government  
2 or by any of its representatives which are not contained in this written agreement. I concur  
3 in the entry of the plea as indicated above and on the terms and conditions set forth in this  
4 agreement as in the best interests of my client. I agree to make a bona fide effort to ensure  
5 the guilty plea is entered in accordance with the requirements of Rule 11, Fed. R. Crim. P.

6 I translated or caused to be translated this agreement from English into Spanish to  
7 the defendant on the \_\_\_\_\_ day of N/A, 2023.

8  
9  
10 Date: 19 July 23

  
Thomas Edward Higgins, Jr.  
Attorney for Defendant

11  
12 GOVERNMENT'S APPROVAL

13 I have reviewed this matter and the plea agreement. I agree on behalf of the United  
14 States that the terms and conditions set forth are appropriate and are in the best interests of  
15 justice.

16 GARY M. RESTAINO  
17 United States Attorney  
18 District of Arizona

19 Date: \_\_\_\_\_

  
MICAH SCHMIT  
Assistant U.S. Attorney

Digitally signed by GERARD SCHMIT  
Date: 2023.07.18 14:48:55 -07'00'